

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

MEGAN-RACINE ASSOCIATES, INC.

CASE NO. 92-00860

Debtor

Chapter 11

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APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This contested matter involves the Seventh Application For Allowance For Services Rendered As Attorneys for Debtor-in-Possession ("Seventh Application"), filed by Menter, Rudin & Trivelpiece, P.C. ("Menter"), on November 9, 1994. The Seventh Application Seeks a fee of \$98,592.50 together with reimbursement of expenses in the sum of \$5,810.66.

A hearing on the Seventh Application appeared on the Court's calendar at Syracuse, New York on December 6, 1994.

Opposition to the Seventh Application was filed by the United States Trustee ("UST") on December 2, 1994. Thereafter, the hearing on the Seventh Application was adjourned numerous times to allow Menter to respond to the Objection of the UST. On March 3, 1995, Menter filed its Responsive Affirmation and the contested matter was submitted for decision as of that date.

#### JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §§1334(b), 157(a)(b)(1) and (2)(A).

#### DISCUSSION

The Objection of the UST focuses the Court's attention on two discrete issues. The first is whether Menter should be compensated for travel time at its full hourly rate in this Chapter 11 case and the second is whether it should be compensated for the time consumed by two or more of its attorneys participating in the same intra-office conference.

As to the first issue, the UST in its Objection has identified a total of 66.5 hours of travel time which it contends Menter has billed at its full hourly rate, a practice which this Court has consistently rejected except in the most unusual case.

Menter defends its request for travel at a fully hourly rate by indicating that three of its attorneys had to travel from Syracuse, New York to Canton, New York, the site of Debtors' co-

generation facility, to review thousands of documents in preparation for discovery in a pending adversary proceeding in which Debtor is a defendant. Additionally, Menter contends that during each trip its attorneys were actively engaged in discussing and preparing for whatever activity or court appearance it was that necessitated the travel.

This Court, as indicated, has generally approved a professional's travel time at one half its requested hourly rate. This practice is obviously grounded upon the premise that travel, at least by motor vehicle, is for the most part a consumption of unproductive time which should not be charged to a debtor's estate at the same hourly rate as in office or in court time. The Court recognizes, however, that modern technology has to some extent turned a motor vehicle into an office on wheels. Cellular phones, dictating equipment and laptop computers allow professionals to practice their profession, even while driving or riding in a moving motor vehicle. The fact, however, remains that travel time cannot be as productive as in court or in office time and the Court does not intend to deviate from its 50% of hourly rates standard based on the facts presented in Menter's Seventh Application.

Thus, the Court will approve that portion of the Seventh Application which incorporates 66.5 hours of travel time at one-half of the hourly rate and reduce the amount being sought by \$4,933.75.<sup>1</sup>

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<sup>1</sup> The Court notes that it has approved the travel time of the Examiner in this case at his full hourly rate. However that travel was previously air travel from Kansas to Syracuse, New York, rather than travel by motor vehicle between Syracuse, New York and Canton, New York.

Turning to Menter's request for fees for more than one of the attorneys participating in the same intra-office conferences. The Court has previously criticized such a practice in this very case when it denied fees to the Examiner relying upon the rationale of In re Adventist Living Centers, Inc., 137 B.R. 692, 607 (Bankr. N.D.Ill. 1991). ( See Memorandum-Decision, Findings of Fact, Conclusions of Law and Order dated May 20, 1993.)

Menter asserts that the intra-office conferences for which it seeks compensation in the Seventh Application should be viewed differently because they were necessitated by the so-called Power Purchase Agreement ("PPA") litigation involving Niagara Mohawk Power Corporation ("NIMO"), the outcome of which litigation will impact on the rights of all of the interested parties in this Chapter 11 case.

The Court, being conversant with the complexities and magnitude of the PPA litigation, agrees with Menter that the involvement of more than one of its attorneys was and is warranted, even to the extent of each attorney's separate participation in intra-office conferences concerning same. Further, the Court believes that Menter's contemporaneous time records sufficiently detail the role of each attorney in the office conference. See In re Blackwood Associates, L.P., 165 B.R. 108, 112 (Bankr. E.D.N.Y. 1994).

The Court has analyzed Exhibit 2 attached to the Objection of the UST entitled "Conferences Attended By Two Or More Firm Attorneys" and concludes that of the intra-office conference hours reflected there, only 11.4 hours can be identified as not

pertaining to the PPA litigation. Thus, the Court will disallow only those hours which at the respective hourly rates total \$1,838. With regard to the UST's criticism of Menter's lumping of entries, the Court notes it, but does not believe that it is so prevalent as to prevent the Court's analysis of the Seventh Application.

Consequently, the Court will disallow travel time at the full hourly rate reducing the Seventh Application by \$4,933.75 and disallow intra-office conference time by \$1,838 for a total fee reduction of \$6,771.75.

In line with the Objection of the UST and Local Rule 216.1(b)(1)(D) effective January 1, 1995, the Court will reduce Menter's request for reimbursement of expenses attributable to telecopier charges by \$98.

The balance of the attorney's fee and reimbursement of expenses are approved.

Submit order accordingly.

Dated at Utica, New York

this        day of

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge